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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Muller, K.

SERIAL NO.: 09/574,277

ART UNIT: 2833

FILED: 05/19/2000

EXAMINER: Harvey, J.

TITLE: ELECTRICAL PLUG CONNECTOR PARTICULARLY FOR
AUTOMOTIVE APPLICATIONS

#17
7-12-02
Jurn

ATTORNEY DOCKET NO.: C2359

502-009444-US (PAR)

Commissioner for Patents

Washington, D.C. 20231

RESPONSE

Sir:

This is in response to the Notification of Non-Compliance mailed 6/20/02 (Paper no. 15) (hereinafter the Notice) in regard to the above-identified patent application.

Applicant respectfully submits that the Notice, at least in part, appears to be incorrect, and hence defective. Accordingly, the Applicant respectfully requests that the requirements in the defective portion of the Notice be withdrawn.

In Section 6 of the Notice, it is indicated that, a single ground of rejection has been applied to two or more claims, and that the brief includes the statement required by 37 C.F.R. 1.192(c)(7) that one or more claims do not stand or

fall together, yet does not present arguments in support thereof in the argument section of the brief. This statement is incorrect, and because of this, at least Section 6 of the Notice is defective.

Section 6 of the Notice is incorrect for the following reasons.

1. As stated in Section VI "Issues" of the Appeal Brief, in the Action from which the Appeal was taken, Claim 1 was rejected as being unpatentable under 35 U.S.C. 102 as being anticipated by Shuey. Claims 4-5 were rejected as unpatentable under 35 U.S.C. 103 as being obvious over Shuey. These are not a single ground of rejection.

2. On page 3, Section VII, "Grouping of Claims" of the Appeal Brief it is stated that "[t]he claims do not stand or fall together." This section lists Groups 1-2 (i.e. Group 1 with Claim 1; and Group 2 with Claims 4-5).

3. The patentability of the claims in each different group of Group 1- Group 2 is argued separately in Section VIII, "Argument" of the Appeal Brief. The argument as to why the claim (Claim 1) in Group 1 is patentable is presented on pages 4-5 of the Appeal Brief. A separate argument as to why the claims (Claims 4-5) in Group 2 are patentable is presented on pages 5-6 of the Appeal Brief. Each respective argument for each group of claims (Groups 1-2) in the Appeal Brief is substantive in nature distinguishing between features in the corresponding group and cited references and does not merely point out differences in what the claims cover. Indeed, as noted before, the issue in the respective argument presented for each group is

different (Group 1 the issue is Shuey anticipation of Claim 1 and Group 2 the issue is whether Claims 4-5 are obvious over Shuey). Hence, a separate argument as to the patentability of the claims in each group of the groups (Groups 1-2) listed in Section VII has been made in the Argument section (Section VIII) of the Appeal Brief.

The Appeal Brief as filed meets the requirements of 37 C.F.R. 1.192(c)(7) to have the separate patentability of a plurality of claims subject to the same rejection considered, because as stated in M.P.E.P. 1206, (A) the Appeal Brief includes a statement that the claims do not stand or fall together; and (B) the Appeal Brief presents arguments why the claims subject to the same rejection are separately patentable.

The Applicant further notes that the requirement in 37 C.F.R. 1.192(c)(7) wherein for each ground of rejection that applies to two or more claims, the appellant "explain why the claims of the group are believed to be separately patentable" has been interpreted to require only that the appellant present separate arguments as to the patentability of the claims subject to the same ground of rejection (see Ex parte Schier, 21 USPQ2d 1017, 1019 (Bd. of Pat. App. and Intf. 1991). As stated in the M.P.E.P., 37 C.F.R. 1.192(c)(7) requires the inclusion of reasons in order to avoid unsupported assertions of separate patentability. The Appeal Brief in the instant application does not make unsupported assertions of separate patentability and includes reasons to support the assertions made in Section VII of separate patentability of the claims in each group.

In conclusion, the Appeal Brief in the instant application meets the requirements of 37 C.F.R. 1.192(c)(7), as explained in the M.P.E.P. Section 1206 and applicable court decisions, because: (A) the Appeal Brief includes a statement that the claims do not stand or fall together; and (B) the Appeal Brief presents arguments why the claims subject to the same rejection are separately patentable. The Appeal Brief makes no unsupported assertions of separate patentability. Accordingly, Section 6 of the Notice is incorrect and defective and should be withdrawn.

Section 9 of the Notice indicates that three (3) copies of the Appeal Brief were not filed as required in 37 C.F.R. 1.192(a). Accordingly, three (3) copies of the Appeal Brief will be submitted with a mailed copy of this response (being sent via first class mail) to satisfy the requirements of 37 C.F.R. 1.192(a). It is submitted that in view of the above, the Applicant/Appellant has met all the requirements of 37 C.F.R. 1.192 for filing an appeal before the Board of Patent Appeals. Accordingly, the Applicant/Appellant request that prosecution of the Appeal be allowed to proceed in due course.

Should any unresolved issue remain, the Examiner is invited to call Applicant's Attorney at the telephone number indicated below.

Please charge any fee deficiency arising from the filing of
this response to Deposit Account No. 16-1350.

Respectfully submitted,



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7/5/02

Date

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